No. 93-578

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

SNAP-ON TOOLS CORPORATION, JAMES GOMENDI and STEVE GULLEDGE,

Petitioners,

v.

WILLIAM C. VETTER and ELAINE LAPOINTE-VETTER,

Respondents.

Petition For A Writ Of Certiorari To The Montana District Court For The Fourth Judicial District, Missoula County, Montana

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does section 3 of the Federal Arbitration Act, 9 U.S.C. § 3, require a state court to stay proceedings when the action before it presents issues referable to arbitration under the Act?

LISTS REQUIRED BY RULES 14.1(b) AND 29.1

Pursuant to this Court's Rules 14.1(b) and 29.1, petitioners certify that the names of all parties to the proceeding in the Montana District Court for the Fourth Judicial District, Missoula County, Montana appear in the caption of the case, that the corporate petitioner has no parent companies, and that its subsidiary companies are wholly owned.

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PETITION FOR A WRIT OF CERTIORARI TO THE MONTANA DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT, MISSOULA COUNTY, MONTANA

Petitioners Snap-on Tools Corporation, James Gomendi and Steve Gulledge, defendants in the Montana District Court for the Fourth Judicial District, Missoula County, Montana and petitioners and appellants in the Montana Supreme Court, respectfully petition this Court to issue a writ of certiorari to the Montana District Court to review the order of that court denying petitioners' motion to stay proceedings pending arbitration in compliance with the terms of the written arbitration agreement between Snap-on and William Vetter, one of the plaintiffs below.

OPINIONS BELOW

The orders of the Montana Supreme Court are not reported and are reproduced at pp. 1a-4a of the Appendix to this Petition (hereinafter "Pet. App."). The opinion of the Montana District Court for the Fourth Judicial District, Missoula County, Montana is unreported and is reproduced at Pet. App. 5a-7a.

JURISDICTION

The Montana Supreme Court dismissed petitioners' appeal in an order entered on August 31, 1993, after having denied petitioners' petition for a writ of supervisory control in an order entered on July 27, 1993. This Court's jurisdiction arises under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Relevant portions of Article VI of the Constitution, and section 3 of the Federal Arbitration Act, 9 U.S.C. § 3, are set out in Pet. App. 20a.

STATEMENT OF THE CASE

A. The Facts

Snap-on Tools Corporation is a manufacturer of high quality hand-tools intended for ultimate sale primarily to professional mechanics. Snap-on markets these tools principally through a nationwide network of several thousand independent distributors who buy tools from Snap-on, take them in specially-fitted vans to places of business where professional mechanics work, and attempt to sell them to the mechanics working there. Messrs. Gomendi and Gulledge were managerial level Snap-on employees at the time of the events in controversy.

On September 11, 1990, William Vetter signed a written Authorized Dealer Agreement and became a Snap-on distributor. Paragraph 11 of that agreement provided for final and binding arbitration to resolve any disputes that might arise between Mr. Vetter and Snap-on or any Snap-on employee:

> RESOLUTION OF DISPUTES—ARBITRATION. Any controversy or dispute arising out of or relating to this Agreement including, but not limited to, any claim by the Dealer concerning the entry into, performance under or termination of this Agreement, any claim against an employee, officer or director of the Company, or any claim of

> breach of the Agreement, shall be submitted to final and binding arbitration as the sole and exclusive remedy for any such controversy or dispute. . . .
>
> The right and duty of the parties to this Agreement to resolve any disputes by arbitration shall be governed exclusively by the Federal Arbitration Act, as amended, and arbitration shall take place according to the rules of the American Arbitration Association.

B. Procedural History

On or shortly before March 3, 1993, Mr. Vetter and Elaine LaPointe-Vetter, his wife, filed suit in the Montana District Court for the Fourth Judicial District, Missoula County, Montana against Snap-on and Messrs. Gomendi and Gulledge. Each of their claims related to alleged acts or omissions committed in the course of inducing Mr. Vetter to become a Snap-on distributor or in the course of performance under the Authorized Dealer Agreement once he became one.[1]

Snap-on and its individual co-defendants promptly filed a motion asking the state court to stay proceedings pending arbitration. Shortly after doing so,

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[1] Specifically, plaintiffs complained that defendants had misrepresented income potential and capital requirements, among other things, "[i]n order to induce Plaintiffs to invest money in a Snap-On [sic] dealership" (Complaint, ¶ 9), that defendants concealed material information about Snap-on dealerships (*id.*, ¶ 12), that defendants interfered with "Plaintiffs' operation of the Snap-On [sic] dealership" while it was under way (*id.*, ¶ 16), and that plaintiffs as a result "were forced into terminating their Snap-On [sic] dealership . . . . " (*Id.*, ¶ 17) *See* Pet. App. 10a-13a.

Snap-on filed a separate action in the United States District Court for the District of Montana, seeking an order compelling Mr. Vetter to proceed to arbitration. Snap-on's federal court motion to compel arbitration has been fully briefed, submitted and awaiting decision since May 14, 1993.

The Vetters resisted petitioners' state court motion on an array of grounds. On May 27, 1993, the state court denied petitioners' stay motion. The state court did not address the merits of the Vetters' defenses to the obligation to arbitrate. The only reason that it gave for denial was that it had discretion to deny the motion.[2] Indeed, even in denying petitioners' alternative motion to dismiss the complaint, the state court said only that "at this stage in the case claims have been stated . . . which *may* not be subject to the arbitration clause . . . ." Pet. App. 7a (emphasis added).

Snap-on and the individual defendants filed a notice of appeal to the Montana Supreme Court and also asked that court for a writ of supervisory control. On

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[2] The district court's statement that petitioners conceded the existence of such discretion (Pet. App. 6a) is mistaken. *See* Pet. App. 8a-9a. Petitioners in fact vigorously insisted that 9 U.S.C. § 3 absolutely required a stay of litigation proceedings between the parties contractually required to arbitrate. *Id.* (These citations are to petitioners' state court brief. Despite repeated requests, the court reporter has thus far been unable to produce a transcript of the oral argument on petitioners' motion.) Petitioners recognized, as this Court has, that whether proceedings should likewise be stayed between *non-arbitrating* parties (*i.e.*, Ms. LaPointe-Vetter and those against whom she had asserted claims) was a discretionary matter. *See generally Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 20 n.23 (1983).

July 27, 1993, the Montana Supreme Court declined without opinion to issue a writ of supervisory control. On August 31, 1993, the Montana Supreme Court dismissed the appeal on the ground that it did not have jurisdiction to entertain an interlocutory appeal from an order denying a motion for a stay pending arbitration.

C. This Court's Jurisdiction Under 28 U.S.C. § 1257

Because the Montana Supreme Court declined to review the case, the Montana District Court's judgment is that of "the highest court [in that State] in which a decision could be had" within the meaning of 28 U.S.C. § 1257(1). *See Virginian Railway Co. v. Mullens*, 271 U.S. 220, 221 (1926).

That judgment is also "final" for purposes of § 1257 review for all of the reasons expressed in *Southland Corp. v. Keating*, 465 U.S. 1, 6-8 (1984) ("For us to delay review of a state judicial decision denying enforcement of the contract to arbitrate until the state-court litigation has run its course would defeat the core purpose of a contract to arbitrate."); *see also Volt Information Sciences, Inc. v. Stanford University Board of Trustees*, 489 U.S. 468, 473 & n.4 (1989).

REASONS FOR GRANTING THE WRIT

Introduction

If 9 U.S.C. § 3 applies in state court, then the decision below is wrong. A § 3 stay of litigation between arbitrating parties is mandatory, not discretionary. *See Pearce v. E.F. Hutton Group, Inc.*, 828 F.2d 826, 829-30 (D.C. Cir. 1987); *Seguros Banvenez, S.A. v. S/S Oliver Drescher*, 761 F.2d 855, 862 (2d Cir. 1985). The issue here therefore turns entirely on

whether 9 U.S.C. § 3 is applicable to state-court proceedings.

I. AUTHORITY AMONG THE STATE APPELLATE COURTS AND WITHIN THIS COURT ITSELF IS SPLIT ON THE ISSUE PRESENTED BY THIS PETITION.

Twice in recent years, with sharply conflicting implications about the merits, opinions of this Court have identified in *dicta* the question raised by this petition. In *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 26 (1983), this Court commented flatly that, "[S]tate courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the [Federal] Arbitration Act." This Court proceeded to explain that:

> Although § 3 [of the Federal Arbitration Act] refers ambiguously to a suit "in any of the courts of the United States," the state courts have almost unanimously recognized that the stay provision of § 3 applies to suits in state as well as federal courts, requiring them to issue the same speedy relief when a dispute is referable to arbitration. . . . This is necessary to carry out Congress' intent to mandate enforcement of all covered arbitration agreements; Congress can hardly have meant that an agreement to arbitrate can be enforced against a party who attempts to litigate an arbitrable dispute in federal court, but not against one who sues on the same dispute in state court.

Id., n.34. In *Volt Information Sciences, Inc. v. Stanford University Board of Trustees*, 489 U.S. 468, 477 n.6 (1989), by contrast, this Court pointed out that

it had "never held that §§ 3 and 4 [of the Federal Arbitration Act], which by their terms appear to apply only to proceedings in federal court . . . are nevertheless applicable in state court." *See also Southland Corp. v. Keating*, 465 U.S. 1, 16 n.10 (1984) (expressly reserving judgment on question of whether 9 U.S.C. §§ 3 and 4 apply in state court).

Mirroring the divergence implicit in these comments are conflicting results in state appellate courts confronted with the question.

Most state appellate courts that have addressed the issue have held that 9 U.S.C. § 3 applies to proceedings in state court. *See, e.g., Ex Parte Redshaw, Inc.*, 524 So. 2d 367, 369 (Ala. Civ. App. 1987) ("The Federal Arbitration Act . . . requires that a trial court stay judicial proceedings pending before it and enforce the arbitration provisions of the parties' contract when such exist. This requirement applies to proceedings in state, as well as in federal, courts."); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McCollum*, 666 S.W.2d 604, 609-610 (Tex. App. 1984) ("It is clear that the issue of arbitrability is governed by a body of substantive federal law applicable in both state and federal court. 'Moreover, state courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the Federal Arbitration Act. . . . ' ") (*citing and quoting from Moses H. Cone, supra*); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Melamed*, 405 So. 2d 790, 793 (Fla. App. 1981) ("We also hold that the provisions of Section 3 of the Federal Arbitration Act apply to Florida state courts. Section 3 generally requires 'courts of the United States' to stay judicial proceedings upon a showing that the disputes are subject to a valid and enforce-

able arbitration agreement. We feel compelled to interpret the somewhat ambiguous expression 'courts of the United States' to include Florida courts in order to protect the rights created by the Federal Arbitration Act.") (note omitted); and *Allison v. Medicab International, Inc.*, 92 Wash. 2d 199, 597 P.2d 380, 382 (1979) (*en banc*) ("The [Federal Arbitration A]ct also requires that, when pursuant to an arbitration agreement arbitration of a claim has been demanded, any lawsuit 'brought in any of the courts of the United States' involving that claim must be stayed until arbitration has been completed."); *see also Burke County Public Schools Board of Education v. Shaver Partnership*, 279 S.E.2d 816, 823-25 (N.C. 1981) (holding, without directly discussing the applicability of 9 U.S.C. § 3, that the Federal Arbitration Act generally displaces contrary state law in cases involving contracts within scope of FAA, and reversing denial of motion for stay pending arbitration); and *Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 67 Cal. App. 3d 19, 23-24, 136 Cal. Rptr. 378, 380-81 (1977) (holding that 9 U.S.C. § 4 is applicable in state court proceedings).

One state appellate court ruling and one published decision of a state trial court, however, have held that 9 U.S.C. § 3 does not apply in state court. In *Madison Beauty Supply, Ltd. v. Helene Curtis, Inc.*, 167 Wis. 2d 237, 244, 481 N.W.2d 644, 648 (Wis. App. 1992), the Wisconsin Court of Appeals recognized that the substantive portions of the Federal Arbitration Act necessarily prevailed over contrary provisions of state law, but held that "§ 3 of the FAA does not apply in state court." Similarly, in *Pullman, Incorporated v. Phoenix Steel Corp.*, 304

A.2d 334, 337-38 (Del. Super. 1973), the court held that the Federal Arbitration Act *in toto* was inapplicable in state court actions.

While the overwhelming weight of pertinent authority is thus contrary to the decision below, existing case law does present some disagreement on an issue that this Court has noted without deciding. Only this Court can provide the definitive guidance called for.

II. THIS ISSUE IMPLICATES POLICY CONCERNS THAT THIS COURT HAS REPEATEDLY IDENTIFIED AS BOTH STRONG AND IMPORTANT.

However this issue is resolved, that resolution will have implications going to the heart of the strong federal policy favoring commercial arbitration—a policy that the Federal Arbitration Act itself emphatically articulates and that this Court has repeatedly endorsed. *See* 9 U.S.C. § 2; *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) ("The [Federal] Arbitration Act . . . establishes a 'federal policy favoring arbitration' [citing case], requiring that we rigorously enforce agreements to arbitrate."); *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983)(referring to Federal Arbitration Act's declaration of a "liberal federal policy favoring arbitration.").

Recognition and enforcement of this policy is encouraging arbitration, as it was intended to. The American Arbitration Association reports that commercial arbitration demands filed with it went from 6,777 in 1984 to 12,220 in 1989—an 80% increase. While it is impossible to say how many of those filings involve actual or potential state court litigation, this Court has recognized that "enforcement of the [Federal Arbitration] Act is left in large part to the state

courts . . . ." *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 25 n.32 (1983). Given the limited character of federal jurisdiction and the ease with which plaintiffs can block diversity, state courts will inevitably play a pivotal role in effectuating or defeating this important federal policy in a large percentage of these cases.

As this Court has recognized, the central purpose of the Federal Arbitration Act was to negate long-standing judicial and common law hostility to commercial arbitration, and to make such arbitration the speedy and inexpensive dispute-resolution mechanism that it is supposed to be in cases where parties have contracted for it. *See Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984). That hostility continues to pervade many state statutes purporting to regulate arbitration. Montana, for example, conditions enforcement of arbitration clauses on conspicuous disclosure on the face of a contract of the fact that it includes a provision for arbitration. *See* Mont. Code Ann. § 27-5-114(4). Numerous other states have adopted statutory provisions that purport in similar fashion to condition or otherwise impair the enforceability of arbitration agreements.[3]

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[3] *See, e.g.*, Iowa Code Ann. §§ 679A.1-2a and c (barring enforcement of prospective arbitration agreements contained in "contracts of adhesion" or providing for arbitration of "any claim sounding in tort", unless the arbitration is provided for in an entirely separate agreement); Mo. Rev. Stats. § 435.350 (excluding "contracts of adhesion" from general rule of enforceability of arbitration clauses); Tex. Rev. Civ. Stats. Art. 224 (conditioning enforceability of arbitration agreement on its having been made "upon the advice of counsel to both parties as evidenced by counsels' signatures thereon . . . . "); So. Car. Code

Insofar as arbitration agreements coming within the scope of the Federal Arbitration Act are concerned, these anti-arbitration provisions are substantively meaningless—at least in theory. Under the Supremacy Clause, an arbitration agreement satisfying the criteria specified in 9 U.S.C. § 2 is "valid, irrevocable, and enforceable" notwithstanding contrary state law, *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984), unless a defense applicable to contracts generally—and not merely to arbitration agreements—can be established. *See Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 403-404 (1965).

To hold that state courts may, in their discretion, allow parties to proceed with litigation in state courts despite a contractual obligation to arbitrate would countenance procedural negation of the substantive supremacy to which the Federal Arbitration Act is constitutionally entitled. By the simple expedient of refusing to stay proceedings on the basis of a discretionary determination for which no specific ground needs to be stated and which cannot be effectively reviewed, a state court hostile to arbitration could deprive one party of the benefits of its arbitration agreement. The exercise of unexplained judicial discretion could in that case thwart federal policy even though elaborate and straightforward state statutory regulation could not.

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§ 15-48-10(a) (conditioning enforceability of arbitration agreement on conspicuous disclosure of fact that agreement includes arbitration clause); and Wis. Stats. § 135.05 (conditioning enforceability of arbitration agreements in dealership contracts on agreement providing dealer with protection at least equal to that provided by dealer statute itself).

The reason for this anomaly is that the Federal Arbitration Act, though articulating a strong federal policy and providing an array of remedies to effectuate that policy, does *not* create a substantive claim within the federal question jurisdiction of the federal courts. *See Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 25 n.32 (1983). Removal to federal court of a state court case involving arbitrable issues is possible only if diversity or some other independent basis for federal jurisdiction exists. Where, as here, plaintiffs have asserted no federal claim and have foreclosed complete diversity by joining co-citizens as defendants on allegations that are not frivolous on their face, removal is impossible and the case must remain in state court.[4]

The principal defendant, to be sure, may often (though not always) invoke diversity jurisdiction in order to bring an independent action in federal court to compel arbitration pursuant to 9 U.S.C. § 4, as Snap-on did in this case. Unfortunately, that does not solve the problem. That defendant is still required to bear the expense and inconvenience of state court litigation, which deprives it of one of the principal benefits of arbitration. As the Texas Court of Appeals explained, in reversing a trial court's refusal to com-

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[4] Implementation of this tactic is a straightforward matter in the typical case, because the principal defendant will usually have employees who are citizens of the same state as the plaintiffs and who had some involvement with the transaction in dispute. Unless the pleadings themselves are plainly inadequate under state substantive law or the allegations are simply imaginary, the sharply limited right to disregard the citizenship of non-diverse parties on grounds of sham joinder provides no effective remedy.

pel arbitration of claims before it pursuant to 9 U.S.C. § 4:

> To compel the parties to proceed to a traditional trial on the merits, "only to have that lawsuit rendered a nullity on appeal," and finally reach the arbitration the parties originally agreed to is no adequate remedy under any definition. Even though the parties will eventually proceed to arbitration, to postpone it until after trial and appeal renders their arbitration agreement meaningless. [citing cases] . . . . The benefits of arbitration (speed and lower cost) will be lost once the parties are forced to go through the litigation and appellate processes.

Shearson Lehman Hutton, Inc. v. McKay, 763 S.W.2d 934, 939 (Tex. App. 1989) (parenthetical explanation in original).

Indeed, if a state court action proceeds to judgment before arbitration can be compelled, and then completed, and the resulting award confirmed and reduced to judgment, the *entire* benefit of the arbitration agreement may arguably be lost at least in some states. In states that, unlike Texas, have not expressly addressed the issue, it is not at all clear how (if at all) the state court judgment could be set aside, and its *res judicata* and collateral estoppel effects avoided, on the basis of a conflicting or inconsistent arbitral award. Allowing parallel pursuit of litigation and arbitration not only encourages the parties to engage in a frantic race to judgment, it leaves them with no practical alternative but to do so.

Arguably, a party that has sought a § 4 compulsion order in federal court may also ask the federal court to stay parallel state-court litigation pending arbitration, pursuant to 28 U.S.C. §§ 1651 and 2283 (as Snap-on in fact has done). As noted at pp. 21-22, *infra*, the lower federal courts have frequently held that they have such power, although this Court has reserved judgment on the issue. *See Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 25 n.32 (1983).

Assuming that this option is ultimately held to be available, however, it fails for three reasons to provide a party seeking arbitration with everything 9 U.S.C. § 3 provides. First, by requiring two lawsuits in two courts at two different levels, it complicates litigation instead of simplifying it, and makes ultimate disposition more expensive rather than less. Second, it forces the party seeking arbitration to rely on an exercise of the discretion inherent in 28 U.S.C. §§ 1651 and 2283, rather than the categorical command of 9 U.S.C. § 3. Third, it confronts that party with a gratuitous obstacle in the form of any federal court's natural reluctance to inject itself into what it may see as the case management and docket control activities of a state court.

III. THE CONTENTION THAT SECTION 3 OF THE FEDERAL ARBITRATION ACT DOES NOT APPLY IN STATE COURTS WOULD BE INCONSISTENT WITH THE STATUTORY LANGUAGE AND WITH THE STATUTORY SCHEME AS A WHOLE.

These anomalies, however unfortunate, might not be remediable by this Court if they resulted from Congress's failure to mandate stays of state court

litigation in deference to arbitration.[5] If Congress intended 9 U.S.C. § 3 to apply only in federal court and to play no role in regulating state court litigation implicating that statute, then any duty on the part of state courts to stay litigation pending arbitration would have to be found elsewhere. Such a narrow interpretation of § 3, however, would artificially and unnecessarily narrow the express terms of the statute and would impair the coherence of the statutory scheme that has emerged from decades of interpretation by this Court.

In language that this Court has said is "ambiguous[]", *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*,460 U.S. 1, 26 n.34 (1983), § 3 mandates a stay of proceedings pending arbitration when "any issue" in a case brought in "any of the courts of the United States" is referable to arbitration under a qualifying agreement. The ambiguity is undeniable. "[A]ny of the courts of the United States" could mean either "any court existing by the authority of the United States government" or "any court within the United States." Both interpretive and policy considerations suggest that the former, narrow interpretation is mistaken and the latter, inclusive interpretation is correct.

What the Statute Says. When the Congress that adopted the Federal Arbitration Act intended to re-

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[5] They are likewise unavoidable where they result from the decision of the parties to the arbitration agreement to contract for application of state law, including state procedural law. *See, e.g., Volt Information Sciences, Inc. v. Stanford University Board of Trustees*, 489 U.S. 466 (1989). Here, the parties contracted expressly for arbitration questions to be governed by the Federal Arbitration Act and not by state law.

strict a provision to federal court, it left no room for conjecture about what it was doing. In contrast to the unqualified reference to "any of the courts of the United States" in § 3 of the Federal Arbitration Act, § 4 as originally enacted unambiguously limited its reach to federal courts, referring with unmistakable precision to

> any court of the United States which, save for such [arbitration] agreement, would have jurisdiction under the judicial code at law, in equity, or in admiralty of the subject matter of a suit arising out of the controversy between the parties . . . .

Act of Feb. 12, 1925, chap. 213, § 4, 43 Stat. 883.

Significantly, when Congress in 1954 adopted a comprehensive measure for the purpose of correcting obsolete references in various federal statutes, it made no change at all to § 3. It amended § 4, however, to refer to

> any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties . . . .

Act of Sept. 3, 1954, now codified at 9 U.S.C. § 4. The Senate Judiciary Committee Report explained that, "'United States district court' was substituted for 'court of the United States' because, among Federal courts, such a proceeding [*i.e.*, an original petition to compel arbitration] would be brought only in a district court." Senate Report No. 2498 at p. 9 (83rd Cong., 2d Session Aug. 18, 1954). Congress obviously

did not believe that a § 3 motion to stay litigation pending arbitration could likewise be brought only in a federal district court.

And for good reason. State courts are as a matter of plain language among the "courts of the United States", in the same way that institutions of higher learning established by the states are among "the colleges and universities of the United States". The states are not merely integral components of a politically indivisible nation, they are collectively "*the* United States". Calling courts established by the several states "courts of the United States" is not a legal fiction indulged to finesse inconvenient statutory language—it is the literal meaning of the words Congress chose to use.

The Statutory Scheme. This Court has rejected the view that the Federal Arbitration Act was merely a pre-*Erie* prescription of law to be applied to proceedings in federal court. *Southland Corp. v. Keating*, 465 U.S. 1, 10-11 (1984). This Court has instead found in that statute a preemptive exercise of Congress's plenary powers under the Commerce Clause, *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 401-402 & nn. 6-7 (1965), whose substantive provisions apply in state and federal court. *Southland Corp., supra*; *Moses H. Cone, supra* at 24. Though certainly not free from dissent as it evolved, this reading of the statute is now firmly established and all parties involved appear to recognize that it is far too late in the day to consider its reversal.

The key question is thus not so much how § 3 might be interpreted if it were read in isolation, but what it means as an integral part of the coherent statutory scheme that has emerged from this Court's shaping

of the FAA's prescription that qualifying arbitration agreements are "valid, irrevocable and enforceable . . . ." Viewed in that light, the question of whether § 3 applies in state courts virtually answers itself. *A priori*, several different ways of making arbitration agreements functionally enforceable might be imagined. Once the congressional policy objective of ensuring speedy, definitive and low-cost resolution of commercial disputes is admitted, however, the only enforcement scheme that does not defeat the statute's purpose is the one that Congress in fact provided—*i.e.*, mandatory delay of litigation in deference to arbitration. Any other approach by definition makes ultimate resolution of the dispute more complicated, costlier and more time-consuming, so that whatever vindication of a party's arbitration rights eventually emerges is a hollow victory.

Section 3, in other words, is itself a substantive rather than a procedural provision. It does not tell either state or federal courts *how* litigation shall proceed. It tells them both that litigation *shall not* proceed until arbitration has been had.

Not only do the anomalies entailed by the narrow interpretation argue against the practical utility of that interpretation, they also cast doubt on the plausibility of any congressional intent to legislate such a result. In the face of diametric conflict between competing policy concerns, Congress deliberately chose to displace a regime of hostility to arbitration long-established in state and federal substantive law. To give meaning to that choice, Congress thought it necessary to require federal courts (at least) to stay litigation involving any issue referable to arbitration, divesting those courts of any discretion in that area.

The suggestion that Congress nevertheless intended state courts to have an unbridled discretion flatly denied to their federal counterparts imputes to the statutory scheme an incoherence fundamentally inconsistent with the importance Congress clearly attached to the policy judgment it had made. As this Court put it in *Moses H. Cone*, 9 U.S.C. § 2 "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive *or procedural* policies to the contrary." 460 U.S. at 24 (emphasis added) It would also be inconsistent with this Court's insistence that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Id.* at 24-25.

The only countervailing consideration is an understandable reluctance to prescribe what superficially appear to be procedural rules for state courts through federal enactments. This concern is not trivial. Upon examination, however, it does not warrant the crippling impairment of the Federal Arbitration Act that the narrow interpretation of § 3 would bring about.

The notion that Congress can tell the state courts what they must do but may not tell them how they must do it is formalistic hair-splitting, long discredited in other areas of interplay between the state and federal systems.[6] The substance/procedure distinction

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[6] *See, e.g., Brown v. Western Railway of Alabama*, 338 U.S. 294, 296 (1949) (a "federal right cannot be defeated by the forms of local practice"); *see also Felder v. Casey*, 487 U.S. 131, 150-151 (1988) ("Federal law takes state courts as it finds them

is as false here as it is in other areas of the law. Substantive regulation cannot be divorced from prescriptions with procedural implications.

One of the most obvious examples is the command of 28 U.S.C. § 1446(d) that, after removal of a civil action from state to federal court "the State court shall proceed no further unless and until the case is remanded." Even more to the point is the authority of federal courts to stay state court litigation when it is necessary to do so in aid of the federal courts' own jurisdiction. *See* 28 U.S.C. §§ 1651, 2283. Indeed, the lower federal courts have consistently held that these provisions give them authority to stay state court litigation pending arbitration.[7] It would be

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only insofar as those courts employ rules that do not 'impose unnecessary burdens upon rights of recovery authorized by federal laws' . . . Just as federal courts are constitutionally obligated to apply state law to state claims, . . . so too the Supremacy Clause imposes on state courts a constitutional duty 'to proceed in such manner that all the substantial rights of the parties under controlling federal law [are] protected.' ") (citations omitted); *Davis v. Wechsler*, 263 U.S. 22, 24 (1923) ("Whatever spring the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."); *see generally Testa v. Katt*, 330 U.S. 386, 391 (1947).

[7] *See, e.g., McGuire, Cornwell & Blakely v. Grider*, 765 F. Supp. 1048, 1052 (D. Colo. 1991); *McMahon v. Shearson/American Express Inc.*, 709 F. Supp. 369, 374-75 & n.21 (S.D.N.Y. 1989), *merits not appealed, sanctions vacated*, 896 F.2d 17 (2d Cir. 1990); *Hunt v. Mobil Oil Corp.*, 583 F. Supp. 1092, 1095 (S.D.N.Y. 1984); *Blount Brothers Corp. v. M. K. Steel, Inc.*, 524 F. Supp. 1037, 1039 (N.D. Ala. 1981); and *Network Cinema Corp. v. Glassburn*, 357 F. Supp. 169, 172 (S.D.N.Y. 1973). This Court has reserved judgment on that issue. *See Moses H. Cone Mem-*

anomalous in the extreme to suggest that Congress can authorize federal courts to stay state court litigation but lacks the power to direct the state courts themselves to do so.

Congress has decided that parties who have contracted for arbitration should get the benefits of their bargain, which include the speed, lack of expense, and finality of arbitral procedures and avoidance of the cost, vexation and delay of parallel litigation. Such parties cannot get those benefits unless arbitration is completed before litigation of arbitrable issues proceeds. It made sense for Congress to require that to happen, as well as to preserve the jurisdiction of federal courts to entertain motions to confirm arbitral awards and to enter judgment upon them. That is precisely what Congress did when it adopted 9 U.S.C. § 3.

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orial Hospital v Mercury Construction Corp., 460 U.S. 1, 25 n.32 (1983).

CONCLUSION

For these reasons, petitioners respectfully pray for issuance of a writ of certiorari to the Montana District Court for the Fourth Judicial District, Missoula County, Montana, for review and reversal of that court's order denying petitioners' motion for a stay of proceedings pending arbitration.

Dated this 12th day of September, 1993.

Respectfully submitted,

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APPENDIX

APPENDIX

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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 93-302

SNAP-ON TOOLS CORPORATION, JAMES GOMENDI, and STEVE GULLEDGE,

Relators,

v.

FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY, and THE HONORABLE JOHN W. LARSON, Presiding Judge, and WILLIAM C. VETTER and ELAINE LAPOINTE-VETTER,

Respondents.

ORDER

Relators Snap-On Tools Corporation, James Gomendi, and Steve Gulledge, having applied to this Court for a writ of supervisory control, and this Court having now considered the application and the arguments in opposition thereto,

IT IS HEREBY ORDERED that Relators' application for a writ of supervisory control is DENIED.

The Clerk is directed to mail a true copy of this order to all counsel of record and to the Honorable John W. Larson, District Judge.

DATED this 27th day of July, 1993.

/s/ ????
Chief Justice

/s/ John Conway Harrison

/s/ ????

/s/ ????

/s/ Karla M. Gray

/s/ ????

/s/ ????

Justices

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 93-302

SNAP-ON TOOLS CORPORATION, JAMES GOMENDI, and STEVE GULLEDGE,

Relators,

v.

FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY, and THE HONORABLE JOHN W. LARSON, Presiding Judge, and WILLIAM C. VETTER and ELAINE LAPOINTE-VETTER,

Respondents.

FILED

AUG 31 1993

/s/ Ed Smith

CLERK OF SUPREME COURT
STATE OF MONTANA

ORDER

On May 27, 1993, the District Court issued an opinion and order denying appellants' motion to stay proceedings pending resolution of appellants' petition to compel arbitration filed in a companion case in Federal Court. On June 14, 1993, appellants filed their notice of appeal from the District Court's order denying their motion for a stay.

On August 9, 1993, respondents filed their motion in this court for an order dismissing the appeal on the basis that it is not an appealable order pursuant to Rule 1, M.R.App.P.

Appellate Rule 1 allows appeals from final judgments or from certain interlocutory orders specified in Rule 1(b)(2). There was no final judgment entered in the District Court, and an order denying a motion to stay proceedings is not one of the specified interlocutory orders provided for in Rule 1(b)(2).

Section 27-5-324, MCA, provides for an appeal from an order denying an application to compel arbitration or from an order staying arbitration. However, no such order has been entered in the District Court because appellants' petition for an order compelling arbitration was filed in Federal District Court, rather than in the State District Court.

Therefore, we conclude that there is no basis for an appeal from the order entered by the District Court denying appellants' motion for a stay of proceedings, and the appellants' appeal is, accordingly, DISMISSED.

The Clerk is directed to mail true and correct copies of this order to all parties of record.

Dated this 31st day of August, 1993.

/s/ ????
Chief Justice

/s/ John Conway Harrison

/s/ ????

/s/ ????

/s/ Karla M. Gray

/s/ ????

/s/ ????
Justices

MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

Cause No. 77498/21

WILLIAM C. VETTER, an individual, and ELAINE LAPOINTE-VETTER, an individual,

Plaintiff,

vs.

SNAP-ON TOOLS CORPORATION, a corporation; JAMES GOMENDI, an individual, and STEVE GULLEDGE, an individual,

Defendant.

FILED MAY 27 1993

BY KATHLEEN D. BREUER, CLERK
Laura M. Driscoll
Deputy

OPINION AND ORDER

This hearing was held on Wednesday, May 19, 1993. William and Elaine Vetter have filed a Complaint in this Court against Snap-On Tools, its employee, James Gomendi, and a former employee, Steve Gulledge. The theory of recovery advanced by the Vetters includes intentional and/or negligent representation, negligence and interference with economic advantage in connection with William Vetter's signing of a franchise agreement (the "Agreement") with Snap-On Tools. Almost a month after Vetters' claims were filed in this Court, Snap-On filed a Motion to Compel Arbitration in a Federal Court proceeding against William Vetter. Snap-On claimed diversity jurisdiction on the basis that it is a Delaware Corporation with its prin-

cipal place of business is in Wisconsin while Vetter is a resident of Montana. Snap-On did not list any of its employees or Elaine Vetter as parties in the Federal Court proceeding. Vetter has opposed Snap-On's Motion to Compel in Federal Court.

Snap-On has moved in this Court to stay the proceedings and in the alternative to dismiss for failure to state a claim. Snap-On's theory in its Motion to Stay Proceedings is that (1) the arbitration provision in the Agreement is valid and this Court should stay proceedings pending arbitration; and (2) this Court, to promote judicial economy, should stay proceedings pending action by the Federal Court on Snap-On's Motion to Compel Arbitration. Snap-On admitted at the hearing that this Court has the discretion whether or not to stay the proceedings. Snap-On's Motion to Dismiss is based on the premise that because the Agreement requires the parties to submit their claims to arbitration, the Vetters have failed to state a claim in this Court.

After review of the file herein, including the arguments advanced by counsel both in their briefs and oral argument, the Court makes the following determination concerning Snap-On's Motion for a Stay.

1. Snap-On's Motion for a Stay with regard to William and Elaine Vetter's claims against Snap-On Tools and its employee James Gomendi and former employee Steve Gulledge is hereby denied.

2. In considering a motion to dismiss under Rule 12(b)(6), M.R.Civ.P., the complaint must be construed in the light most favorable to the plaintiff, and all allegations of fact contained therein must be taken as true. *Wilson v. Taylor*, 194 Mont. 123, 126, 634 P.2d 1180 (1981). A complaint may not be dismissed for failure to state a claim unless the plaintiff can prove no set of facts in support of his claim. *Id.*

Although William Vetter has submitted an Affidavit, the Court has considered Snap-On's Motion to Dismiss without regard to the Affidavit. Based solely on the pleadings, the Court finds that at this stage in the case claims have been stated by the Vetters which may not be subject to the arbitration clause of the Agreement. The Motion to Dismiss is therefore denied.

DATED this 27th day of May, 1993.

/s/ John W. Larson
JOHN W. LARSON
District Judge

cc: Donald V. Snavely
Paul J. Petit

MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

Cause No. 77498

WILLIAM C. VETTER, an individual, and ELAINE LAPOINTE-VETTER, an individual,

Plaintiffs,

-vs-

SNAP-ON TOOLS CORPORATION, a corporation; JAMES GOMENDI, an individual, and STEVE GULLEDGE, an individual,

Defendants.

COMPLAINT FOR DAMAGES AND OTHER RELIEF
-and-
DEMAND FOR JURY TRIAL

Plaintiffs William C. Vetter and Elaine LaPointe-Vetter ("Plaintiffs"), for their claims against the defendants named above, allege as follows:

I. PARTIES

1. Plaintiffs are husband and wife, are residents of Missoula County, Montana, and acquired and operated a Snap-On Tools dealership from about September, 1990 through May of 1991.

2. Defendant Snap-On Tools Corporation ("Snap-On") is a corporation which conducts business throughout the State of Montana, including in Missoula County, through authorized dealers and other employees and agents. Snap-On is engaged in business, among other things, in selling mechanic's tools and accessories to the motor vehicle mechanic's trade.

3. Defendant James Gomendi ("Gomendi") is an individual who resides in the State of Montana. Defendant

Steve Gulledge ("Gulledge") is an individual whose residence is unknown. Defendants Gomendi and Gulledge were, all times material to this action, agents and employees of Snap-On who made representations to the Plaintiffs, and otherwise dealt with the Plaintiffs, concerning the Snap-On dealership in western Montana in which Plaintiffs invested and which they operated.

4. The term "Defendants" shall mean and include Snap-On, Gomendi and Gulledge. The term "Defendant" shall refer to any one of these Defendants. References in this Complaint to acts or omissions being committed by the "Defendants" shall mean that said acts and omissions were performed by each Defendant, personally or acting through the agency of another Defendant.

5. Plaintiffs are informed and believe that, in performing the acts and omissions alleged below, each Defendant was acting as the employee and/or agent of each other Defendant, each Defendant performed said acts and omissions within the course and scope of his/her employment and/or agency with the other Defendants and with the full permission and knowledge of the other Defendants, and the other Defendants authorized and/or ratified all acts and omissions of each other Defendant, as alleged below, pursuant to said employment and/or agency.

II. JURISDICTION/VENUE

6. This Court has jurisdiction over this cause pursuant to its general original jurisdiction provided by Montana Code Annotated § 3-5-302. Acts and omissions which are the subject of this cause principally occurred in the State of Montana. Further, this cause involves claims arising out of the statutes and common law of the State of Montana.

7. The torts described below were committed in Missoula County, Montana. Venue is thus proper in this Court pursuant to Montana Code Annotated § 25-2-122.

III. CLAIMS FOR RELIEF

8. Plaintiffs incorporate by reference herein each and every allegation set forth in paragraphs 1-7 above.

9. In about August of 1990, Plaintiffs were approached by the Defendants for the purpose of soliciting Plaintiffs to serve as a Snap-On dealer in the Missoula area. In order to induce Plaintiffs to invest monies in a Snap-On dealership, the Defendants represented to Plaintiffs, both orally and in writing, various material facts, including among others the following: (a) if Plaintiffs worked on the business an average of 60 to 70 hours per week they would earn a minimum of $50,000.00 net before taxes as a Snap-On dealer; (b) after reviewing Plaintiffs' financial resources, Plaintiffs had sufficient capital to invest in and operate a Snap-On dealership; (c) if Plaintiffs followed the Snap-On sales and marketing program they would earn net profits initially of $50,000.00 per year and these profits would increase with time; (d) Snap-On would provide adequate and ongoing support for Plaintiffs' operation of a Snap-On dealership by adequately training Plaintiffs, providing demonstrations of all Snap-On products to Plaintiffs, advising Plaintiffs as to the proper methods of operating their business, assisting Plaintiffs in obtaining financing for their dealership, and timely delivering all orders of Snap-On tools made by Plaintiffs; and (e) Plaintiffs' operation of a Snap-On dealership would ultimately lead to long-term financial security for Plaintiffs and their family. At this time the Defendants further represented to Plaintiffs that they had more than 70 years expertise in the marketing of mechanic's tools and that Plaintiffs, who were inexperienced in that area, could rely upon the Defendants' expertise and guidance to establish and operate a successful and profitable Snap-On dealership in western Montana.

10. As a result of the self-proclaimed expertise of the Defendants in marketing mechanic's tools, their long his-

tory of working in the industry, their representations to Plaintiffs, and Plaintiffs' inexperience in the industry, a relationship of trust and confidence arose between the Defendants, on the one hand, and the Plaintiffs, on the other hand, such that the Defendants owed fiduciary duties of the highest order to Plaintiffs, including among others the duty to avoid making the slightest misrepresentation or concealment of any kind to the Plaintiffs, the duty not to obtain any advantage from the Plaintiffs without fully disclosing all material facts to the Plaintiffs, and generally the duty to act with undivided loyalty, fidelity and the highest good faith in all of their dealings with Plaintiffs.

11. In reliance upon the misrepresentations of the Defendants and the relationship of trust and confidence existing between them and the Defendants, Plaintiffs invested virtually all of their life savings in a Snap-On dealership in the Missoula area. Plaintiffs commenced the operation of that dealership in September of 1990 and continued operating that dealership until May of 1991.

12. At the time the Defendants made the foregoing representations to Plaintiffs, the Defendants concealed material information from Plaintiffs. Among other things, the Defendants failed to disclose to Plaintiffs (a) that the prior Snap-On dealer in the subject territory, as well as the Defendants themselves, had alienated numerous customers to the point where they would not purchase Snap-On products, (b) that the sales for the prior Snap-On dealer were declining at the time he terminated his dealership with Snap-On, and (c) that as a result of new competition, alienation of customers, reduced market territory for this dealership and other factors the subject Snap-On dealership would generate sales and profits significantly less than those which were represented to Plaintiffs, and in fact could not be operated at any reasonable profit. Rather, the Defendants represented to Plaintiffs that the prior Snap-On dealer had averaged $5,500.00 per week in gross sales for the year prior to the termination of his relation-

ship with Snap-On, that Plaintiffs could readily continue to generate sales in approximately that amount during their operation of the dealership, and that sales in that amount would generate net profits to Plaintiffs in excess of $65,000 per year.

13. Plaintiffs are informed and believe that the foregoing representations of the Defendants, and the Defendants' concealment of material information from Plaintiffs, were performed knowingly, intentionally, fraudulently, with knowledge that the statements were false when they were made, and with knowledge that Plaintiffs were relying upon the nonexistence of the nondisclosed facts. At a minimum, Plaintiffs are informed that the Defendants made these representations, and concealed these facts, negligently without any reasonable basis for believing them to be true and without exercising reasonable care in obtaining and communicating this information to Plaintiffs.

14. The facts as represented to Plaintiffs by the Defendants were false. Among other things, at the time these representations were made the Snap-On dealership sold to Plaintiffs was not capable of generating net profits in the amount of $50,000.00 per year and could barely be operated on a "break even" basis, more than 90 hours per week were required from Plaintiffs to properly operate that dealership under Snap-On guidelines, significantly greater capital was required to operate the dealership than Plaintiffs had available to them, the prior Snap-On dealer had not generated average weekly sales in the amount of $5,500.00 for the year prior to Plaintiffs' purchase, and generally the subject Snap-On dealership was a nonprofitable dealership because of increased competition in the area, alienation of clients which resulted from the Defendants' conduct, the Defendants' effort to reduce the territories of its dealers in such a manner that the individual dealers would suffer but the Defendants would

profit, and the failure of the Defendants to adequately support and assist their dealers as represented.

15. During their operation of their Snap-On dealership, Plaintiffs worked diligently to promote the business. Plaintiffs spent in excess of 100 hours per week working on the business, invested all of their available capital in the business and borrowed additional sums of money which were injected into the business, and generally exercised their best efforts to operate and promote the business. Notwithstanding these efforts, the dealership failed to generate any net profits and Plaintiffs lost all of their investment in the same.

16. During Plaintiffs' operation of the Snap-On dealership, the Defendants engaged in a course of conduct which operated to interfere with Plaintiffs' successful operation of the business and their obtaining any economic benefit therefrom. Among other things, the Defendants imposed unduly burdensome and unnecessary paperwork and reporting requirements on the Plaintiffs, continually alienated and harassed customers of Plaintiffs, continually harassed and intimidated Plaintiffs, and generally engaged in a course of conduct designed to control the manner in which Plaintiffs operated their dealership so as to increase profits for the Defendants but decrease profits for individual dealers.

17. As a result of the foregoing, Plaintiffs were forced into terminating their Snap-On dealership in May of 1991. Plaintiffs were thereafter forced to liquidate their inventory and equipment and suffered substantial losses as a result thereof.

18. The Defendants obtained an advantage from the Plaintiffs by reason of the foregoing conduct, including profits from product sales made by Plaintiffs. The Defendants are thus liable to Plaintiffs for constructive fraud, as well as actual fraud for intentional and/or negligent misrepresentation and concealment of material facts.

Further, the conduct of the Defendants alleged above was performed negligently and contrary to the standards of care of a reasonable person in similar circumstances. Additionally, the Defendants are liable to Plaintiffs' for interfering with prospective and actual economic advantage attributable to the efforts and work of Plaintiffs.

19. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in that they have lost substantial sums of money invested by them in the Snap-On dealership, they have wasted countless hours of their time in a futile effort to operate the Snap-On dealership, Plaintiffs have suffered severe stress, strain, harassment, embarrassment and other emotional distress, and consequent bodily injury, and Plaintiffs have suffered other general damages, the full extent, nature and amount of which are presently unknown but will be proven at the trial of this action.

20. Plaintiffs are informed and believe that the foregoing conduct of the Defendants was committed fraudulently, maliciously, oppressively, and otherwise in such a manner as to render the Defendants liable for an award of punitive, or exemplary, damages in this action.

21. Plaintiffs seek an award of attorney's fees and costs incurred in prosecuting this action pursuant to the pertinent Montana laws, if any.

WHEREFORE, Plaintiffs pray for judgment against Snap-On, Gomendi and Gulledge, jointly and severally, as follows:

(i) An award of compensatory damages in such amounts as are proven at trial;

(ii) An award of punitive damages in such amounts as are proven at trial, should the conduct of the Defendants be found sufficiently culpable to warrant the same;

(iii) An award of all reasonable attorney's fees and costs incurred by the Plaintiffs in connection with this proceeding to the extent permitted by applicable Montana laws; and

(iv) An award of such additional relief as may be necessary or appropriate to protect or effectuate the rights of the Plaintiffs in connection with the transactions described above.

SNAVELY LAW OFFICES
Attorneys for Plaintiffs

DATED: 2/24/93

By: /s/ Don Snavely
Donald V. Snavely

DEMAND FOR JURY TRIAL

Plaintiffs hereby hereby demand trial by jury of all issues so triable in the above action.

SNAVELY LAW OFFICES
Attorneys for Plaintiffs

DATED: 2/24/93

By: /s/ Don Snavely
Donald V. Snavely

MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

Cause No. 77498

WILLIAM C. VETTER and ELAINE LAPOINTE-VETTER,
Plaintiffs,

v.

SNAP-ON TOOLS CORPORATION, JAMES GOMENDI and STEVE GULLEDGE,
Defendants,

FILED MAR 22 1993

BY KATHLEEN D. BREUER, Clerk
Deputy

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO STAY PENDING ARBITRATION OF CLAIMS

INTRODUCTION

This brief is filed in support of a motion by Defendants, Snap-on Tools Corporation ("Snap-on") and its employee, Steve Gulledge and its former employee, James Gomendi,[1] for an order staying proceedings in the above-captioned action pending arbitration. The Defendants seek to enforce an arbitration agreement between Snap-on and plaintiff William Vetter, formerly

* * *

language does not permit the federal court to consider claims of fraud in the inducement of the

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[1] The defendants will be collectively referred to either as "defendants" or "Snap-On".

> contract generally. . . . We hold, therefore, that in passing upon a § 3 application for a stay while the parties arbitrate, a federal court may consider only issues relating to the making and performance of the agreement to arbitrate.

The Montana Supreme Court has also applied this holding to Montana state courts. *See, Larsen v. Opie*, 771 P.2d 977, 979-80 (1989); *Vukasin v. D.A. Davidson & Co.*, 785 P.2d 713, 716-17 (1990). Thus, the allegations of fraud in the inducement of the Dealer Agreement cannot defeat the agreement to arbitrate these claims.

B. Vetter Cannot Defeat the Arbitration Provision By Joining His Wife as a Party Plaintiff

The presence in this action of Mrs. Vetter as an additional plaintiff does not in any way dilute Snap-on's right to a stay under 9 U.S.C. § 3. The United States Supreme Court has held flatly that, "Under the [Federal] Arbitration Act, an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement." *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 20 (note omitted).

The Montana Supreme Court has ordered plaintiffs who may not have been parties to the arbitration agreement to arbitrate whether or not they are covered by the agreement. In *Passage v. Prudential-Bache Securities, Inc.*, 727 P.2d 1298, 1303 (Mont. 1986), the parents of minor children sued their securities broker for mismanagement of their own accounts and some accounts held in the name of the children. The District Court found that the children were not signatories to any arbitration agreement, but stayed their action anyway, pending the resolution of the parents' claims in arbitration. The Supreme Court held that whether the childrens' accounts were covered by the arbitration agreement was, itself, an arbitrable issue and ordered the children to arbitrate their claims.

In this case, it appears that all of Mrs. Vetter's claims are derivative of her husband's claims. As such, her claims should at least be stayed pending arbitration of Mr. Vetter's claims. A key purpose of arbitration would be defeated if a party to an arbitration agreement could thwart that agreement by the simple expedient of joining to the action someone who had not signed the arbitration agreement. Instead of *reducing* the expense, vexation, delay and hazard of civil litigation, allowing such tactics to succeed would increase them by requiring litigation both in court and before the arbitrators.

Section 3 of the Federal Arbitration Act requires a stay of the entire proceeding when *any* arbitrable issue is involved in it. Section 3 would thus mandate the requested stay if any issue here were referable to arbitration. In fact, *every* issue in this case is arbitrable. The requested stay should be granted.

UNITED STATES CONSTITUTION, ARTICLE VI, CLAUSE 2

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

9 UNITED STATES CODE, SECTION 3

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.